

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ERIC DEXTER WELCH, #10444-089,

Plaintiff,

Case No. 2:17-cv-38

v.

Honorable Gordon J. Quist

MARK L. DOBIAS,

Defendant.

**ORDER TO PROCEED IN FORMA PAUPERIS
AND FOR PAYMENT OF FILING FEE ON APPEAL**

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. The Court dismissed Plaintiff's action on May 10, 2017 (ECF Nos. 8 and 9). Plaintiff has sought leave to proceed *in forma pauperis* on appeal. This Court previously certified under 28 U.S.C. § 1915(a)(3) that an appeal would not be taken in good faith. *McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). The certification under § 1915(a)(3) does not affect Plaintiff's responsibility to pay the entire appellate filing fee pursuant to § 1915(b)(1) of the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134. *McGore*, 114 F.3d at 610-611.

The fee for appealing a civil action is \$505.00. Plaintiff must pay a portion of the \$505.00 fee as an initial partial filing fee. The initial partial filing fee is 20 percent of the greater of (a) the average monthly deposit to the prisoner's account; or (b) the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the notice of appeal. 28 U.S.C. § 1915(b)(1); *McGore*, 114 F.3d at 611. In this case, the average monthly deposit exceeds the average monthly balance. According to the certified copy of Plaintiff's prison trust account statement, Plaintiff had an average monthly deposit of \$383.79. Twenty percent of

Plaintiff's average monthly deposit is 76.76. Plaintiff shall remit \$76.76 within 28 days of the date of this order to the address listed at the end of this order. The check or other form of payment shall be payable to "Clerk, U.S. District Court" and must indicate the case number in which the payment is made.

After Plaintiff has paid the initial partial filing fee of \$76.76, Plaintiff must also pay the remaining amount of the filing fee through monthly payments of 20 percent of the preceding month's income credited to Plaintiff's prison trust fund account. *See* 28 U.S.C. § 1915(b)(2). These payments will be forwarded by the agency having custody of Plaintiff to the Clerk of this Court each time the amount in Plaintiff's trust account exceeds \$10.00, until the filing fee is paid in full. *See* 28 U.S.C. § 1915(b)(2); *Hampton v. Hobbs*, 106 F.3d 1281, 1284 (6th Cir. 1997). The check or money order shall be payable to "Clerk, U.S. District Court" and must indicate the case number in which the payment is made. If the amount in Plaintiff's account is \$10.00 or less, no payment is required for that month. *See Hampton*, 106 F.3d at 1284-85.

In light of the foregoing, the Court orders the following:

IT IS ORDERED that leave to proceed *in forma pauperis* on appeal is granted and within **28 days** hereof Plaintiff shall pay an initial partial filing fee of \$76.76 to the Clerk of this Court. **Plaintiff's failure to comply with this order may result in dismissal of this appeal without prejudice, however, such a dismissal will not negate Plaintiff's responsibility to pay the fee.**

IT IS FURTHER ORDERED that the agency having custody of Plaintiff shall collect the remainder of the filing fee. As outlined above, each month that the amount in Plaintiff's account exceeds \$10.00, the agency shall collect 20 percent of the preceding month's income and

remit that amount to the Clerk of this Court. The agency shall continue to collect monthly payments from Plaintiff's prisoner account until the entire remaining filing fee is paid.

Dated: January 19, 2018

/s/ Timothy P. Greeley
TIMOTHY P. GREELEY
UNITED STATES MAGISTRATE JUDGE

SEND REMITTANCES TO:

Clerk, U.S. District Court
399 Federal Bldg.
110 Michigan St., N.W.
Grand Rapids, MI 49503

All checks or other forms of payment shall be payable to "Clerk, U.S. District Court."